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COMMITTEE ON HEALTH AND HUMAN SERVICES
January 20, 2005
LB 25, 26, 27, 164, 174, 301

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 20, 2005, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 25, LB 26, LB 27, LB 164, LB 174, and LB 301. Senators present: Jim Jensen, Chairperson; Dennis Byars, Vice Chairperson; Doug Cunningham; Philip Erdman; Gwen Howard; Joel Johnson; and Arnie Stuthman. Senators absent: None.

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SENATOR JENSEN: Good afternoon, ladies and gentlemen. Welcome to the Health and Human Services Committee hearings. This afternoon we have six bills before us, LB 25, LB 26, LB 27, and then LB 164, Senator Bourne's bill, LB 174, which is a bill I'll be introducing, and then LB 301, I'll introduce that for the Health and Human Services Committee. So we will take those in the order that they're presented. I'll briefly go over just a few of the conditions that we operate under here. Every bill we first hear the proponent testimony, then after that is concluded we'll hear the opponent testimony, and then neutral testimony, if there is some. When you do come up to testify, there is a sign-in sheet. We've got some papers over there on that little cart. Please pick one of those up, and so when you come up to testify, it's all filled in, drop it in this box on the table. Also when you come up to testify, please give us your name, spell your last name for us. These proceedings are transcribed and recorded, and so we want to make sure that we get the spelling right on the recording. And if you come back here five years from now, why, you can look up this proceeding and it will be all typed out for you. But also if you are carrying a cell phone, I'd ask that you turn the ringer off, put it on vibrate or whatever other nonsounding anyway, mode, so again that doesn't go off in the transcriber's ears. We also have with us today some senators and some we don't have, but this is bill introduction time across the capitol, and so if they're not here, they are in some other room, probably introducing a bill, or if you see one of our senators get up and leave, please don't take offense, but they are introducing a bill somewhere else. But I will introduce you to those that are

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here. Starting on my far left is Gwen Howard from Omaha, next to her is Senator Arnie Stuthman from Platte Center, next to him is Joel Johnson, from the Kearney area. And then to my immediate left is Joan Warner, who is the committee clerk. My name is Jim Jensen, acting as chairman of the Health and Human Services Committee, and to my right is Jeffery Santema, who is the committee clerk (sic). We have with us today Senator Stuhr, and on these--with your permission, Senator Stuhr, we'd like to take all these as one, but if you come up to testify, please tell us if you're in favor of LB 25, or LB 26, or all of them, so that we may have that on record and understand exactly where you are coming from. But because of the nature of them, I think that we can have them all heard at once and then Senator Stuhr may close, if you wish to, after the testimony is taken. With that, we welcome you to the Health and Human Services Committee.

SENATOR STUHR: Okay, thank you, Senator Jensen, and members of the Health and Human Services Committee. For the record, my name is Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. And I come before you today to introduce LB 25, LB 26, and LB 27. And I'll just briefly go through each one. LB 25 would add two body artists to the Board of Cosmetology. I feel it's important that this industry have representation on this board. There are two reasons for the addition of two members, rather than one. We have found through our extensive conversation with members of this industry and through research that the scope of practice for body art is extremely large. Most artists focus on one area within the practice; typically, as a tattoo artist or a body piercer. We feel that both of these areas should be represented on the board. Additionally, it has come to our attention that in some states that have regulated this industry, if only one person has been put on this overseeing board, they become somewhat a czar of the industry. That one person has used his or her power to effectively keep other businesses out...his or her competition from being licensed, and we certainly do not want this to happen in our state. LB 26 was brought at the request of the industry, and it prohibits body artists from performing a tattoo, a brand, or permanent color technology procedure on anyone under the age of 18. It would also prohibit them from performing a body piercing on anyone

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under the age of 16, with the exception of earlobes. I agreed to introduce this legislation because I continue to believe that young adolescents, especially, are unaware of potential health consequences of unprofessional practices and their long-term effects. From the amount of mail and phone calls that we've received regarding this issue, I also believe that there are some individuals who take advantage of our youth when it comes to these procedures. I also want to point out, however, that I do know that there are many reputable artists who support this legislation. Many have told me that they do not currently perform body art on minors, regardless of parental consent. I will let them expand on the issues as they come forward. Finally, LB 27 sets up provisions for allowing body artists to hold trade shows in the state, should they choose to do so. Through the rules and regulations process, we realized that there was no provision in the legislation that would allow for trade shows or events. Knowing that members of the industry do travel all over the country for these shows, and that these shows can bring economic stimulation to an area, we wanted to make sure that this industry was also allowed to host such a show or event. I briefly wanted to just take this opportunity to share with the new members of the committee some of the history of the involvement of the body art legislation. In 1997 in my district, there were several parents who had contacted me because their fifth-grade daughters had been tattooed by an artist in his own home, and they were very alarmed and they realized at that time that there was no law or ordinance preventing this procedure from happening. My main concern has always been for the health and safety of minors and others who have body art procedures performed. Last session LB 906 addressed the health and safety issues, and I'm very appreciative of the work of the committee in working to get that legislation moved forward. It is not unusual, I think, that once a major piece of legislation is passed, it is followed by some accompanying legislation. And that is why we are introducing LB 25, LB 26, and LB 27 to you today. I also just personally want to thank Jessica Kolterman, who serves as my LA, and many of the body artists who have attended all of the rule and regulation meetings in reference to the passage of LB 906. If there are any questions, I'd be happy to answer them, and we do have a number of body artists with us today who will be testifying.

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SENATOR JENSEN: Thank you. Are there any questions?
Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Jensen.
Senator Stuhr?

SENATOR STUHR: Yes.

SENATOR STUTHMAN: These individuals that are to be added to
this Board of Cosmetology...

SENATOR STUHR: Yes.

SENATOR STUTHMAN: ...who would be the group that would
appoint these people, or how would that procedure be done?

SENATOR STUHR: I would imagine that names would be
forwarded like they are in, you know, in other boards,
sometimes from associations, from groups of artists or such,
that they would forward names to be selected. And I'm not,
you know, I'm not sure who actually does the selection.

JESSICA KOLTERMAN: I think the Governor.

SENATOR STUHR: The Governor, okay.

SENATOR STUTHMAN: And these, there would be notification
out to...

SENATOR STUHR: Oh, yes.

SENATOR STUTHMAN: ...the body piercers and the tattoo
artists...

SENATOR STUHR: Right, that...

SENATOR STUTHMAN: ...that there is an opening for those
individuals on this board...

SENATOR STUHR: Yes, there should be, yes.

SENATOR STUTHMAN: ...and then if someone wants to apply.

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SENATOR STUHR: Yes, there should be.

SENATOR STUTHMAN: Okay, thank you, Senator.

SENATOR STUHR: Um-hum, yes.

SENATOR JENSEN: I might mention I do have a letter of support from the Board of Cosmetology Examiners on LB 25 (Exhibit 2) and we do have a letter...you should have a letter before you, I think, from Dr. Raymond, from the Department of Regulation and Licensure concerning LB 27 (Exhibit 1). I also might mention...would mention that Senator Dennis Byars, Vice Chairman of the Health and Human Services Committee has joined us. Are there any other questions for Senator Stuhr at this time?

SENATOR STUHR: Senator Jensen?

SENATOR JENSEN: Yes.

SENATOR STUHR: Could I make just one comment? It has been brought to our attention just a few minutes, actually, before the hearing that there may be some technical problems with LB 27, which is the event. And if we could have some time to forward an amendment, we would like to do that.

SENATOR JENSEN: Okay, very good, we can accommodate that.

SENATOR STUHR: Okay.

SENATOR JENSEN: Senator, I might mention, or ask one thing. We're talking about, on the piercing side, there are some cultures that do, at least, earlobes, and I understand that you are exempting that out. I don't know if there's any culture that does any more piercing than earlobes, but we're talking about people, not individuals or family members. We're just talking here about those individuals who are in that practice; is that correct?

SENATOR STUHR: Yes. Right, yes.

JESSICA KOLTERMAN: LB 906 does...

SENATOR STUHR: And there may be some comments on that.

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SENATOR JENSEN: Okay, all right, good, Senator Stuhr.

SENATOR STUHR: Okay, thank you.

SENATOR JENSEN: I don't see any other at this point in time. You will be for closing, correct?

SENATOR STUHR: I do have several other bills to introduce, so I will...I'm going to stay as long as I can.

SENATOR JENSEN: Okay, very good.

SENATOR STUHR: Okay?

SENATOR JENSEN: Fine, thank you. First proponent, please?

JOSEPH SMITH: (Exhibit 3) Good afternoon, gentlemen, ma'am. Thank you again for having us here. My name is Joseph Smith, S-m-i-t-h. I'm a proponent of this set of bills. I've prepared something that I'd like to read. It says, with LB 906 finally coming to fruition, there is no better time to thank you for helping us make that possible. Thank you very much. You may remember during my last testimony, I said this was step in the right direction, and it was. Now comes the time to take the next step. We need to pass LB 25, LB 26, and LB 27. I believe these bills will bring us one step closer to our original goal--to establish a chain of responsibility to the body art industry and its practitioners. LB 25 is critical to preserving the integrity of our industry. LB 906 made the Board of Cosmetology our governing authority, which I agree is the best scenario. But without the expertise of a practicing body artist in its ranks, I believe our best interests may be ignored and could be misrepresented. LB 25 would ensure that our industry is represented in all matters before the board. This new bill suggests two members be appointed to the board. I feel this is fair. If there were only person appointed to the board, that person could use their position for a self-serving purpose. With no appointments to the board, we are giving over our sovereignty with no one to represent our interests. The fact is, we disenfranchised ourself, and this bill, LB 25, is our remedy. Please pass LB 25. In regards to LB 26, it says LB 26 is a necessary

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part of reforming this industry, as well as my personal soapbox. I believe body art is coming of the shadows and into the mainstream of society, but this does not mean everyone is eligible to participate. Thank you. There are no decisions more permanent than a tattoo; perhaps equally irreversible, but none more permanent. For this reason I implore you to consider an age limit. Eighteen is a reasonable age for a tattoo. I believe 16 years old is acceptable for piercings, if the custodial parents consents, due to their less permanent nature. The fact is that if we don't set a bottom basement age, 10-year-olds will get their tongues pierced. I think it is naive to assume that parents know the health risks or understand the explicit connotations implied by certain piercings or tattoos. Please consider your own children and the time they pulled the wool over your eyes when delivering this new piece of law. Please pass LB 26. LB 27 is essential to keeping Nebraska in the forefront of this industry. Tattoo trade shows are a growing part of this industry. They are the main source of our continuing education, product development, and provide the competition that sets the bar and drives the standard higher. Without LB 27, we cannot bring any of these fine things to the great state of Nebraska. I'm very proud of this state; unfortunately, I spend a lot of time and energy defending the state to people who think we're a bunch of hayseed hicks. If we host a convention, perhaps we could dispel that myth and prove we're actually cornseed hicks. (Laughter) Please pass LB 27. Thank you, guys.

SENATOR JENSEN: Thank you for your testimony. Any questions?

JOSEPH SMITH: Oh, I'm sorry.

SENATOR JENSEN: Wait, wait. Senator?

SENATOR STUTHMAN: Thank you, Senator Jensen. Joe, your art event, would that be an event or would it be a trade show, or would it be a practicing experience? Or what do you foresee an event to be like?

JOSEPH SMITH: Well, typically the way they work now is 400 to 600 artists all sign up to enter this event. They'll set

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up booths, they'll tattoo at the event, they'll have vendors there, they'll have new products, they'll have contests at the end of the day for people who have been tattooed during the day. And it's more of a competition, and it's more of a competitive environment, I would say, rather than a trade show or you know, I have been to several hair shows. It's not like that. They're not cutting hair at hair shows. That's mostly product development and new products and computer programs. Ours is not like that. We're actually practicing at the convention, and then, at the end of the day, all the work that was completed will enter contests, or be critiqued by other artists. If you don't have clients ready to be tattooed, you can always take classes given by some of the more senior artists in the industry. You can go listen to a sales pitch on a new product. You can take a class in sanitary environments and bloodborne pathogens. There's a lot that goes on. They're usually a weekend event, and I would say that on average...some of the ones I could compare it to, Kansas City has a show. And I think they had probably 300 people last June, tattooing at their show, but they probably had 15,000 through the doors to get tattooed. So they're big events. I don't know if Omaha hosted one that would have had 15,000 people through the door, but I would hope. I would hope.

SENATOR STUTHMAN: Thank you, Joe, and another question. How is the economy with the tattooing? Is your business greater this year than last year?

JOSEPH SMITH: Absolutely, absolutely.

SENATOR STUTHMAN: Is it falling?

JOSEPH SMITH: Absolutely no. I see this...

SENATOR STUTHMAN: I mean, I have no experience; I have no way to find this out or anything.

JOSEPH SMITH: You know, when I came into this industry 12 years ago, I assumed that it was more of a fad than it has turned out to be. I am very pleased with the direction that this industry is going. I think that it is growing exponentially. Some of the technological breakthroughs, new pigments and dyes have made it...I'm sure you've seen

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generations older than me with tattoos that have turned blue and green over the years. With the technology and the pigments today, that doesn't happen, so they're a lot more resilient and make them stay fashionable for a little bit longer. And I don't see a downward trend in this industry.

SENATOR STUTHMAN: Thank you, Joe.

SENATOR JENSEN: Any other questions from the committee? I don't see any. Thank you for your testimony.

JOSEPH SMITH: Thank you.

SENATOR JENSEN: I might mention that Senator Phil Erdman has joined us. Phil is from Bayard, Nebraska. Next proponent, please? Anyone else to testify in support?

MONTY VOGEL: Hello, my name is Monty Vogel. I represent Body Mods Body Piercing out of Omaha, Nebraska.

SENATOR JENSEN: Your last name is spelled how, Monty?

MONTY VOGEL: Vogel, V-o-g-e-l.

SENATOR JENSEN: Thank you.

MONTY VOGEL: First, I'd like to thank everyone with the board for helping to get LB 906 passed, particularly Senator Elaine Stuhr for being the strong representation she was. I've been working with her since 1998 trying to get this bill passed, and finally got to see it through. I'd especially like to thank Jessica for the amount of extraordinary work she's put into it. She has been our liaison and a backbone for everything that's really been beared on her for all of this. I'm in support of all three bills, LB 25, LB 26, and LB 27. As mentioned earlier, LB 27 does have some changes that need to be done, and we'll see to it very soon that those get corrected and turned in. LB 25 itself I feel very important, for the fact that this industry is such a different industry than the one that will represent it, the cosmetology departments. Anybody currently on that board right now, it's been my little saying and joke that if anybody along those industries was to draw blood while doing a procedure, they did something

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wrong; if we draw blood, we did something right. LB 26 itself I'd like to see that little refinement as far as putting a minimum age to this. When LB 906 comes in April for laws, a 12-year-old will be able to get a tattoo on her forehead. It has all been made possible, unless LB 26 gets passed. And LB 27, it would be great to see conventions come to this area. They hold conventions in Europe, from one side of this planet to the other, and we're one of those exceptions right now. If this bill isn't passed, we'll still be able to hold them in Council Bluffs, but I hate to see that business, again, lose more business, you know, to over the river there. Any questions?

SENATOR JENSEN: Good. Any questions? Senator Stuthman has a question.

SENATOR STUTHMAN: Thank you, Senator Jensen. Monty, how has your business been in the past year? Better? Worse?

MONTY VOGEL: It's been great. My business has done a lot of change over the past years. Getting back to LB 25, for the most part most shops are tattoo shops that have piercing as a sideline. I'm known throughout this state and actually throughout the U.S. for piercing. I have people who travel from Minnesota on a regular basis, Colorado, Kansas City...weekly I get somebody from a different state that comes into my shop. I've grown to be more and more of a specialty, and I changed this year and I dropped all my tattooing, and I only do piercing now, as soon as the bill becomes in effect in April. I also do branding. I'll probably be, again, one of the leading authorities along that line, as well. I've become more of a specialty, and been able to, as to where we had everything in the shop before. As we grew, I do so much business in just piercing now, I make more money than what I had as when I did tattooing alongside as a business, too.

SENATOR STUTHMAN: What age are the people that you do the most body piercing on?

MONTY VOGEL: My work has been done...16 is the minimum age in my shop, never pierced anybody under that age, with the exception of earlobes. And my work goes up to...I have a gentleman who is 65 years old with over two pounds of metal.

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SENATOR STUTHMAN: Maybe he wanted to gain some weight?
(Laughter)

MONTY VOGEL: And so we offer large spectrum, and again, because of the amount of piercing and our reputation, I have people who drive long distances for specialty work, because of what we're known for. Our popular age ranges probably run in the 18-25, maybe, and 28, 30 even. And that would be maybe a peak, but I really see...I have ministers coming in at 50 years old who've been trying to get their earlobe pierced for the past six years. The minister finally allowed him, his bishop, to get his earlobe pierced and came in in the past year to get it pierced. And it was a big event. And to think of something like a earlobe is something that we overlook, it's not. Even something like that is a very special event for a person, so it's good to be able to cater in a full realm and be technical about something, what some people may term as, you know, a simple earlobe piercing.

SENATOR STUTHMAN: Okay, thank you.

MONTY VOGEL: You're welcome.

SENATOR JENSEN: Thank you. Any other questions from the committee? Seeing none, thank you for your testimony.

MONTY VOGEL: Thank you.

SENATOR JENSEN: Anyone else wishing to testify in support? Anyone else please come forward.

TYSON SCHAFFERT: Do I have to sign in?

SENATOR JENSEN: Is there a sheet on the table? Pick one up after you...

TYSON SCHAFFERT: After I get done?

SENATOR JENSEN: And yeah, put it in the box after you get done. Go ahead.

TYSON SCHAFFERT: I'm sorry. I'm nervous, sorry. My name

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is Tyson Schaffert, it's S-c-h-a-f-f-e-r-t. I'm representing Iron Brush Tattoo in Lincoln, Nebraska, and I'm here for my support in LB 25, LB 26, and LB 27. I support LB 25 because I believe that we do need two artists on the Board of Cosmetology, because it is such a different area than what we do. I think one person could create a conflict of interest. I support LB 26 because we...at our shop we've never done under 18, and I think it's for the health and safety of minors that we do need a bottom age limit. There is a level of maturity required to pick a tattoo or piercing and also to follow the instructions. There's a lot of body changes that goes on when you're under 18. A lot of these kids come from split homes where a father and mother might bring their child in separate, causing problems in the house. I also support LB 27. The trade shows offer a lot of opportunity for further education, not only the artists but also the community. I guess that's it.

SENATOR JENSEN: Okay, thank you. Any questions from the committee? Yes, Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Jensen. Tyson, how long have you been a tattooer?

TYSON SCHAFFERT: It will be eight years this summer, so about seven years.

SENATOR STUTHMAN: What...why were you interested in being a tattooer?

TYSON SCHAFFERT: I'd always been kind of an illustrator, and...until I met one guy and I realized that you, you know, you could be a real artist when you were being a tattooer, rather than just, I don't know I guess, the common stereotype of one, you know, what I was grown up with. But I realized it was really involved, and I'm completely obsessed with it now. I draw all the time, and it's my passion. It's everything to me.

SENATOR STUTHMAN: Thank you.

SENATOR JENSEN: Any other questions? Thank you for your testimony. Anyone else wishing to testify in support? May I see a show of hands of anyone else who wishes to testify?

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Okay, if you would, come towards the front so you can be ready to testify, so we're not waiting, thank you. Please go ahead.

DEVIN FERGUSON: Thank you. My name is Devin Ferguson, F-e-r-g-u-s-o-n, and I'm here to testify in support of all three of the bills, amendments, before us. LB 25, I will also, more or less, be parroting some of the people that have already spoken. I do believe that two members added to the board will help to give our industry the proper voice that it deserves within the Cosmetology Board, as well as the concept of specialization within our industry. Having one person represented as a piercer may not necessarily have all of the information necessary for the tattooing end of the industry and vice versa, as well as the conflict of interest one person, one shop, one agenda as a possibility, although hopefully not likely. And this is...just for us to have any members on the board is very important, for the simple fact that the cosmetology industry rarely overlaps with our industry, as far as areas of expertise, and the day-to-day operations. And LB 26 is one that I think is personally most important to me. Our shop, from the very beginning since we've opened five years ago, we have never tattooed under the age of 18, and there are several reasons for that, some of which others have touched on. Some of the things that I have heard against this idea of making an 18 age limit is the fact that some people do not want the government parenting their children. And in several instances, and they are countless, we have parents that come to our shop, asking whether we tattoo under the age of 18, and when we say no, they say thank you very much, finally. You know, now I can tell my daughter that's standing right here, or son standing right here, that you guys won't do it and so now it's out of my hands. I'm not the bad guy, you are. And that is something that I'm very, very, very willing to do, and will continue to do. However, it would be very nice to have that as understood across the board. And I think several parents would probably be on board with it, as well. One of the other arguments I've heard is that they will go underground to less reputable places, and that may well be true. However, LB 906 will also...gives us a way to find and potentially prosecute those people who are doing the procedures and so on and so forth. Some of the very good reasons that have been touched on already are the

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facts...for the 18 age limit is that minors are oftentimes not done growing, which can alter the placement or the design of a tattoo in later years, especially depending on the younger that they are. There's a certain maturity level that I believe is necessary for making a permanent decision, and that has fairly obviously been used across the board in several instances. We do not allow parents to sign for their children, regardless of how mature they may believe they are to vote. We do not allow them to sign for their children to drink prior to the age of 21, so on and so forth. And there are other issues that I also believe in. Anyone under the age of 18 or 16, in some instances, depending on the placement of the tattoo that they want to have, would put the artist and the client in very possibly improper situations, where they could be...something as simple or as tragic, honestly, as statutory rape could come into effect, I mean, in improper placement of tattoos on minors, whether a parent says it's okay or not, puts artists and, honestly, clients in a victim and kind of aggressor-type of situation, and I don't think is necessary. LB 27 has been touched on completely, and I agree with it 100 percent. So, that's it.

SENATOR JENSEN: Okay, thank you, Devin. Any questions? Don't see any. Thank you for your testimony.

DEVIN FERGUSON: All right, thank you.

SENATOR JENSEN: Next testifier, please, in support?

MATT ALLSMAN: My name is Matt Allsman, A-l-l-s-m-a-n. I'm a tattooist at a shop in Columbus, Nebraska, called White Dragon Tattoo. I am definitely for all three bills. As everyone else said, we do need two members on the board there, and I'm just going to parrot what everybody else said, so I don't have a lot to say.

SENATOR JENSEN: Okay.

MATT ALLSMAN: But as for the minor subject, I completely agree with having a bottom age of 18 on that, because it just eliminates a lot of problems and different things. Like someone said, one parent from a divorced family brings one in, causes a problem. It just eliminates a lot of

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different problems. And as for the special body art events, that does bring a lot of business to tattooists, and it also is like a very good source of information on new things in the industry.

SENATOR JENSEN: Thank you. Yes, Senator Stuthman has a question?

SENATOR STUTHMAN: Thank you, Senator Jensen. Matt, you're from Columbus?

MATT FERGUSON: Yeah.

SENATOR STUTHMAN: How's business in Columbus?

MATT FERGUSON: Actually, business in Columbus gets better every year. It's...I've been tattooing about six years, and every year it just seems to get better. It's been very good there.

SENATOR STUTHMAN: Do you find any problems with people trying to get tattoos of underage, or anything like that?

MATT FERGUSON: Once in a while somebody comes in, I forgot my ID or, you know, things like that, but we don't really allow any of that to go on.

SENATOR STUTHMAN: What is the age of most of your customers?

MATT FERGUSON: Generally, anywhere from about 18 to, I say, 30, is the general.

SENATOR STUTHMAN: Thank you, Matt.

SENATOR JENSEN: Yes, Senator Johnson?

SENATOR JOHNSON: Do you ever do any aging, bald men?

MATT FERGUSON: Aging bald men? (Laughter) Well, my grandfather keeps telling us that...my grandfather wants me to learn how to tattoo hair that actually stands up, but I told him I couldn't figure it out. (Laughter)

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SENATOR ERDMAN: Maybe you could try on one of your constituents and see how it works out.

MONTY VOGEL: Do you know a couple? (Laughter)

SENATOR JENSEN: Any other questions? Thank you, Matt. Next testifier? I believe this is the last; I didn't see any other hands.

KEN ALLSMAN: I'm Ken Allsman, A-l-l-s-m-a-n, Matt's dad...(inaudible) made that connection...

MATT ALLSMAN: Thanks, Dad.

KEN ALLSMAN: ...out of Columbus, Nebraska. First, I'd like to thank all the committee members that did everything to get the bill that's already passed that's going on already. I appreciate that. It does take a lot of strain off of us when things in the law, so we don't have to deal with irate parents. I am for all three of these, for the same reasons that everyone else has said. We do need some regulations in this industry. It's been a long time coming. I've been tattooing for just almost 13 years, and I've seen a lot of different things go down, people trying to get what they want. I had one lady come in with a 16-year-old daughter that wanted to put a black panther on her forearm. Of course, we didn't do that, and like you said, the mother said, now see? I thought, you know, that should have happened at home, but if we have the regulations, that will...then we can just say, it is state law and we don't have to do it, and we won't do this. I'm really not good at this kind of thing; I'm a better tattooist than I am a speaker, so as far as the older balding men, Matt just put this one on me, and it's starting to get (inaudible). (Laughter) I have...the oldest person I have tattooed on is a 65-year-old grandpa, came in and got his first one and a 67-year-old grandma that got a little thing on her chest, and that was a little interesting, because their skin seemed real thin. So other than that, I'd just like to thank everybody for hearing us out and doing everything they can to get this industry back up on its feet. As far as LB 27, there are other things other than the big events. We've been tattooing at some of the rock festivals. We have a trailer that's been modified, gutted, and it's the same

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criteria as our shop at home, and we take those to do those places. My brother's business, as a matter of fact, he does probably 75 percent of his business--he has a shop in Hastings--is doing his county fair and other outside events like that. So it's...that one I'm really for, because it makes a big part of our business. So thank you.

SENATOR JENSEN: Thank you, Ken. Any other questions from the committee? I don't see any. Thank you.

KEN ALLSMAN: Thank you.

SENATOR JENSEN: Anyone else in support on this? Yes, please come forward.

JOANNE SHIPPERBOTTOM: Hi, my name is JoAnne Shipperbottom, S-h-i-p-p-e-r-b-o-t-t-o-m, with Mojo's DermaGraphics and Design here in Lincoln, and I hadn't planned to come up here, but I'm in support of all three. And I just wanted to add something that you may want to consider when choosing the board members, is maybe take them, one from a different region, like the logical, I guess, would be maybe Lincoln and Omaha, but I don't think you should choose two from Lincoln or two from Omaha. Don't want to leave out the rest of Nebraska, but it would probably be difficult for someone to travel as much as they would need to, but that would just be my suggestion for splitting it up, getting some different areas. Lincoln is a little bit different with some of the college crowd, and so I think it would be a good idea to split it up.

SENATOR JENSEN: Thank you. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Jensen. JoAnne, excuse me, I didn't...what business are you with?

JOANNE SHIPPERBOTTOM: Tattoo.

SENATOR STUTHMAN: You're with tattoos?

JOANNE SHIPPERBOTTOM: Um-hum.

SENATOR STUTHMAN: Here in Lincoln?

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JoANNE SHIPPERBOTTOM: Um-hum.

SENATOR STUTHMAN: How has your business been?

JoANNE SHIPPERBOTTOM: Good.

SENATOR STUTHMAN: Good?

JoANNE SHIPPERBOTTOM: It fluctuates through the year; fall and winter is the slow time. Then spring rolls around and people are showing more skin, so they want to get some work done.

SENATOR STUTHMAN: Do you do work on a lot of college kids?

JoANNE SHIPPERBOTTOM: Um-hum.

SENATOR STUTHMAN: That age group?

JoANNE SHIPPERBOTTOM: Um-hum. And all the way up, just like some of them. The oldest person I tattooed was a 68-year-old school teacher.

SENATOR STUTHMAN: Okay, thank you.

JoANNE SHIPPERBOTTOM: Um-hum.

SENATOR JENSEN: Thank you. Any other questions? I don't see any. Thank you.

JoANNE SHIPPERBOTTOM: All right.

SENATOR JENSEN: Anyone else in support? Last call. Anyone in opposition? Anyone in a neutral testimony? Seeing none, Senator Stuhr, do you wish to close?

SENATOR STUHR: Thank you, Senator Jensen and members of the committee. I think that you have heard some positive testimony from the industry themselves, being in support of LB 25 and LB 26, and as I mentioned before, if you could hold LB 27 until we made some technical changes in that, that would be very much appreciated. So thank you.

SENATOR JENSEN: Very good. Senator Erdman had a question?

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SENATOR ERDMAN: Senator Stuhr, as I read LB 26, it says that no person shall perform body piercing on any person under the 16 years of age. That's an outright prohibition, so that would include...when you say body piercing, is body piercing defined as any type of piercing anywhere on the body?

SENATOR STUHR: Except the earlobes.

SENATOR ERDMAN: Except the earlobes?

SENATOR STUHR: Yes.

SENATOR ERDMAN: And that's already...that was already defined in LB 906?

SENATOR STUHR: Yes, um-hum.

SENATOR ERDMAN: Okay. The other question I have is, sounds like there's a plan or place here in town that's going to give retired teachers a tattoo. Are you...(Laughter)...interested in that program, or...

SENATOR STUHR: I knew someone was going to ask me that. Not at this time, Senator.

SENATOR ERDMAN: Okay, thank you.

SENATOR STUHR: Thank you, thank you very much.

SENATOR JENSEN: Thank you. That will close the hearing on LB 25, LB 26, LB 27. And Senator Bourne is here to open on LB 164. Welcome to the Health and Human Services Committee.

LB 164

SENATOR BOURNE: Thank you. Good afternoon, Senator Jensen, members of the Health and Human Services Committee. My name is Pat Bourne, B-o-u-r-n-e, representing the 8th Legislative District, here today to introduce LB 164. This bill was brought to me by the city of Omaha. It would simply require

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that applications for healthcare facilities include a certificate that the facility would comply with local zoning regulations. Additionally, the bill requires the Department of Health and Human Services to notify local governments when an application has been made for a license to operate a healthcare facility in or near its community. The purpose of this bill is to encourage that state and local governments work together to ensure these facilities are appropriately located. Notification that a facility is seeking license to operate in a community allows the local government and the facility's future neighbors to be better informed, which in the long run should help guarantee the facility's success. I appreciate your committee taking the time to consider this proposal, and I will try to answer any questions, should you have them.

SENATOR JENSEN: Thank you, Senator Bourne. Any questions from the committee? This would include group homes; is that correct?

SENATOR BOURNE: As I understand that, yes, it would. And again, this bill was drafted by the city of Omaha, so that's how I read it. They might offer a clarification.

SENATOR JENSEN: You are aware that there is some, perhaps some federal preemption to...

SENATOR BOURNE: I'm aware of that, but as I understand it, again, the city of Omaha's attorneys have reviewed that statute that you're mentioning, and this bill complies or comports with that legal requirement, as I understand it.

SENATOR JENSEN: Okay.

SENATOR BOURNE: And hopefully that attorney can...or the city of Omaha representative can better flesh out to alleviate your concerns.

SENATOR JENSEN: Thank you, yes, Senator Howard has a question.

SENATOR HOWARD: Senator Bourne, how is the city defining group homes? Is it by number of children? Is it a specific license designation?

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SENATOR BOURNE: Senator Howard, I'm sorry. You'll have to ask the City of Omaha that. I simply...it's an issue that the city council has brought forward. I guess there's been some problems with certain homes being located in areas contrary to zoning restrictions, so if you wouldn't mind, I'd defer the technical questions to them.

SENATOR JENSEN: Any other questions from the committee? Yes, Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Jensen. Senator Bourne, this would apply to an application...notification if an application has been filed, not if a license has been granted?

SENATOR BOURNE: If they file an application to start a home or renew a license, they have to provide notice.

SENATOR STUTHMAN: Notice.

SENATOR BOURNE: Right. And I'm sure that the city of Omaha, the individual from the city of Omaha who's following me can kind of, again, tell you why this is important to their community.

SENATOR STUTHMAN: Okay, thank you.

SENATOR JENSEN: Any other questions. Thank you, Senator Bourne. Will you be here for closing, or...

SENATOR BOURNE: I won't. I'm going to head back to Judiciary Committee. Thank you.

SENATOR JENSEN: Thank you, very good. Thank you. Anyone else testifying in support?

ALAN THELEN: Mr. Chairman, members of the committee, my name is Alan Thelen, T-h-e-l-e-n. I'm an attorney with the Omaha City Attorney's Office and I'm representing the city of Omaha today. The city of Omaha is a proponent of Legislative Bill 164. LB 164, as Senator Bourne has mentioned, deals with the application process for healthcare facilities seeking a state license. The bill is very

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simple. It would enact two simple changes to Section 71-433. The first change would require a healthcare facility applicant to produce a certification from the city that certifies that the proposed facility would comply with the city zoning laws, the attempt being, the right hand knows what the left hand is doing. In other words, that the city and the state are both understanding that both entities have licensure, jurisdictional issues, involved in the facility, and that the facility meets the requirements of both jurisdictions. This would provide assurance to the state Department of Health and Human Services that the facility is being located in a legally appropriate location, zoning wise. And it would address some of the city's concerns about facilities opening up in Omaha without the require zoning permits or in violation of local zoning laws. The second change in this particular statute would be to provide that the state Department of Health and Human Services, upon receipt of one of these applications, would forward...would just simply forward notice of that application to the city--I think specifically to the city clerk of that appropriate city. This again would further address the city's concern that facilities are opening up without the city's knowledge. And I...during Senator Bourne's testimony I heard several questions, and I'm available to answer whatever questions that the committee has.

SENATOR JENSEN: Yes, Senator Byars has a question. Thank you.

SENATOR BYARS: Okay, I want to make absolutely certain that what we're doing here isn't giving anyone the right to discriminate against individuals with disabilities, in particular. I presume that if the Department of Health and Human Services, under the revised language, notifies the zoning authority--in this case, you represent the city of Omaha--the Omaha zoning board, they will deal with zoning, licensure laws that are on the books, at that time. At this point, the city of Omaha couldn't...maybe they could, but you can answer that. Does that open the door for them, then, to have a special hearing to change zoning in a certain situation, to prohibit the establishment of or location of a group home for people with disabilities?

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ALAN THELEN: I suppose that that could happen. I don't know if that would be legal to do that. There may be a possibility of some grandfather rights having vested in that facility, if there's an attempt to change the law after they've applied for that location. So I would hope that that would not be the case.

SENATOR BYARS: Don't you have zoning laws in the city of Omaha now that apply? Why is it necessary to have another step, to have the Health and Human Services notify you if these people are applying for licensure, but you already have...they have to have zoning regulations that they meet right now. Are you saying that the city isn't being notified, or could you talk a little bit about what is precipitating this?

ALAN THELEN: The city has a concern that, for example, substance abuse treatment centers, which are required to have a state license, are being opened up inside the city without going through city channels to also get the proper zoning approvals that would be required there. This would require that such a facility would have to make sure, both on a state and local level, that it is complying with the law. This is not creating any additional, new additional legal requirements on any group homes or substance abuse centers; it's just mostly a matter of ensuring communication between two different levels of government, as to the status of the legal compliance of these facilities.

SENATOR BYARS: I'm hopeful this is very honorable, and I trust Senator Bourne, but sometimes these types of things can be used as a back door for discrimination. And I certainly am very afraid of that, so I'll need to look at this very carefully and see, you know, how this is done in other places, and if we're doing something exceptional that would somebody an opportunity to slam the door on people with disabilities.

ALAN THELEN: Understood. And if we can provide any further specifics on the particular problem, please let us know and we can see if we can meet your needs.

SENATOR BYARS: Thank you very much. On a lighter note, I shared a plane ride with one of your attorneys, Wendy Hahn,

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coming back from Denver last weekend, so tell her hi for me.
(Laughter)

ALAN THELEN: Okay, I'll send her your best. Thank you.

SENATOR JENSEN: Thank you. Senator Stuthman?

SENATOR STUTHMAN: Thank you, Senator Jensen. Alan, this bill...is this bill intended to benefit something, or to restrict something, or...in my opinion, the ability to put something in a community or something like that; deals with local jurisdiction regulations, zoning procedures, and everything like that. But the question that I have and the concern that I have are we...what are we trying to do here? What are trying to accomplish? Is this for the benefit of one group, or is it to restrict something?

ALAN THELEN: I don't think the intent is to restrict. By its terms it doesn't create any new regulations, it doesn't create any new restrictions on these facilities. It mainly, it mostly just facilitates better communication between the state and local levels of government. It tells the state...if there's a zoning compliance issue at the local level, this provides a mechanism to the state to tell the state that there is this issue at the local level, and conversely, it also provides notice to the city that this licensure process is going on at the state. So it's just a matter of communication, I guess we would assert.

SENATOR STUTHMAN: Thank you for your answer, but I'm still...I'm really cloudy on this situation at the present time.

SENATOR JENSEN: Yes, go ahead, Senator Howard.

SENATOR HOWARD: Thank you, thank you. I would really appreciate a clear definition of the population that you're referring to, when you discuss facility, and also the numbers that would be looked at in terms of a group sort of care.

ALAN THELEN: This would affect a statute that talks about the application procedure for healthcare facilities. Healthcare facilities is defined under the state statutes as

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including many different types of facilities. Just to give a couple of examples, the definition of healthcare facilities would include centers for developmental disabilities, it would include hospices, it would include intermediate care facilities for the mentally retarded, it would include substance abuse treatment centers, and it would include some other facilities. So the definition used in the statute is a broad definition that includes these several subcategories of facilities.

SENATOR HOWARD: This could also include children, young people; for example, behavior disorders?

ALAN THELEN: I'm not sure, specifically, on that particular instance, whether that is one of the healthcare facilities that is licensed by the state.

SENATOR HOWARD: And then numbers, when you refer to a group setting?

ALAN THELEN: I'm not aware of any numbers, number ranges that are included in the state definitions of these facilities. For example, I don't know if a substance abuse treatment center is something that is within a range of 6 to 20 people or what. I don't think that those are built...I don't know of those being built into the statutory definitions. I'm sorry, I guess I can't really answer that question.

SENATOR HOWARD: Yeah, I think the...if I understand it, the neighborhood objection is larger numbers in a group-type setting.

ALAN THELEN: Typically that is, yes.

SENATOR HOWARD: So I'm wondering what the numbers would be.

ALAN THELEN: What the numbers would be on these facilities that are creating problems for the city right now?

SENATOR HOWARD: Or that you're looking at.

ALAN THELEN: I think the numbers for the facilities that the city is presently having problems with, the numbers

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would be between 5 and 10 residents in a house, I believe, approximately.

SENATOR HOWARD: Um-hum.

SENATOR JENSEN: Alan, it would appear to me and...Director Nelson, are you going to speak on this bill, may I ask, after...

RICHARD NELSON: I was not planning to, Mr. Chairman. We've submitted a letter with some information.

SENATOR JENSEN: Okay. Well, a healthcare facility would be everything, I think, in my understanding, from a childcare facility to a dentist office to whatever. Now the city of Omaha certainly issues COOs, certificate of occupancies, to every house, every dwelling, every business, every tenant that goes into a building. And so it would seem to me that you do have notice. It might not be before the construction starts. Also, there is a building permit process that you must enter into before you make any corrections. It would seem to me that the city already has notice of this, and it would also appear to me that we're putting quite a burden on the state, not only for Omaha, but for every community, that any time a license is issued by the state of Nebraska, we must then make notice back to that community, which I think would certainly cost and perhaps include an FTE, as we so often add into our departments. So I don't know, unless I'm saying something that's not correct, why Alan, please let me know.

ALAN THELEN: No, you're correct. With a commercial-type facilities, generally those do require a certificate of occupancy from the city, and the city does know about those. I think that the problem that the mayor's office and the city council have been trying to address is more the situation of residential treatment centers that have taken the position that city approval is not required, or that perhaps the city does not have a specific approval process, but it does have regulations on which parts of the city that those residential facilities can go into.

SENATOR JENSEN: Well, I think I know the circumstance of which you're talking about, but I think this...to narrow in

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on that one issue, you've blanketed a whole realm of licensees that are going to have to be made notice of. And whether it be residential or commercial, there's still a COO, every house, every apartment, must have a certificate of occupancy in the city of Omaha. Senator Cunningham? Senator Byars?

SENATOR CUNNINGHAM: You've pretty much answered...

SENATOR JENSEN: All right. Senator Byars, you had another question?

SENATOR BYARS: On my behalf, I'd have to dig deeper. I think I am...I think I have a sense of where this has come from. I...again, I'm very fearful, and I know we have some situations, as far as civil rights are concerned relative to some of these issues also, as far as licensure is concerned and location in neighborhoods, as far as that's concerned also, that need to be dealt with. And I'm just going to need a whole lot more information before I would be ready to approve anything like this. You should know that up front.

ALAN THELEN: Okay, appreciate it.

SENATOR JENSEN: Any other questions of Mr. Thelen? Thanks for your appearance; good to see you.

ALAN THELEN: Thank you.

SENATOR JENSEN: Next proponent? Thank you.

MARY SOMMERMEYER: Senator Jensen and members of the committee, my name is Mary Sommermeyer, and that's S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities, and I just wanted to express our support for the bill. We are in support of things that help facilitate ensuring that local zoning laws are complied with.

SENATOR JENSEN: Thank you, Mary. Any questions of Ms. Sommermeyer? Seeing none, thank you for coming forward.

MARY SOMMERMEYER: Thank you.

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SENATOR JENSEN: Anyone else wishing to testify in support? Anyone in opposition? Anyone in a neutral testimony? If not, that will close the hearing on LB 164, and I'll open on LB 174. Senator Byars?

LB 174

SENATOR BYARS: Senator Jensen to open on LB 174.

SENATOR JENSEN: Thank you, Senator Byars, members of the Health and Human Services Committee. For the record, my name is Jim Jensen, representing District 20, here today to introduce LB 174. I am introducing this on the behalf of the Nebraska Health and Human Services System. The bill relates to licensure fees for healthcare facilities and services under the Healthcare Facility Licensure Act. Current law, in Section 71-434 requires the licensure activities to be supported by license fees. I might mention that several years ago, and particularly when we ran into budget shortfall, we found that the state of Nebraska was actually supporting or adding additional dollars, or was not receiving dollars enough on the licensing fees to cover the licensing procedure. And so with that, it was determined that we would do everything that we could to ensure that the licensing fees took care of the total procedure involving in the cost of a license. And in some instances, those raised fees, and there were some instances where it lowered fees. But licensing fees includes a base fee of \$50, an additional fee based on a variable cost to the department, Health and Human Services Regulation and Licensure, the number of beds available at licensed facilities, the program capacity or facility of a service, and other relevant factors, as determined by the department. LB 174 increases the maximum amount, in other words, the cap, may not be that cap, but it puts it up there, so that it can be adjusted if we would go over that. Of course, they'd have to come back again to this committee and to the Legislature for approval. So this does allow them to move within that, but this is the upper limits that it would be. No more than \$2,600 for a hospital or health clinic, operating as an ambulatory surgical center; that's an increase of \$1,000 from the assisted living facility, hospital, or an intermediate care facility, an intermediate care facility for the mentally retarded,

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that's an ICFMR, nursing facility, or skilled nursing facility. No more than \$2,000 for an assisted living facility, a health clinic providing hemodialysis, or labor or delivery service, an ICF, ICFMR, nursing facility, or a skilled nursing facility. No more than \$1,000 for home-health agencies, hospice services, and centers for the developmentally disabled. No more than \$700 for all other healthcare facilities and healthcare services, which would be an increase of \$500. HHS personnel are here to provide the committee with further details and rationale for those proposed changes. With that, unless you have other questions, the department is behind me, and I think they can answer them better than I can.

SENATOR BYARS: Thank you, Senator Jensen.

SENATOR JENSEN: Thank you.

SENATOR BYARS: I think I can wait to ask Mr. Nelson.

SENATOR JENSEN: Thank you.

SENATOR BYARS: Thank you for your introduction. And welcome to the Health and Human Services Committee.

RICHARD NELSON: Thank you. Thank you, sir.

SENATOR BYARS: Counselor?

RICHARD NELSON: (Exhibit 1) Senator Byars and members of the Health and Human Services Committee, my name is Dick Nelson, N-e-l-s-o-n. I am director of the Department of Health and Human Services Finance and Support. I would like to thank Senator Jensen for introducing this bill on behalf of the Health and Human Services System, and I am here to testify in support of LB 174. This bill is needed to increase the upper ranges for initial and renewal fees for healthcare facilities and services. Healthcare facilities and services include hospitals, ambulatory surgical centers, assisted living facilities, skilled nursing facilities, intermediate care facilities for the mentally retarded, among others. The state general funds are no longer appropriated to support the cost of the healthcare facility licensing program, as Senator Jensen had

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noted. The state's share is intended to come from licensing fees. We need to emphasize, however, that only a portion of the total program cost is paid by the state. In fiscal year '04, licensing and certification of facilities cost \$5,024,940. Only \$1,256,000 or approximately 25 percent came from licensing fees. The balance is paid by Medicare and Medicaid. Now this is possible because many of the federal Medicare and Medicaid certification activities are similar to the state's licensing functions. In accordance with Nebraska Revised Statutes Chapter 71, Section 434t (sic), license fees shall include a base fee of \$50 and an additional fee, based on, first, the variable cost to the department of inspections, architectural plan reviews, and receiving and investigating complaints. This includes our staff salaries, travel, and other similar direct and indirect costs. It also is calculated based on the number of beds available to persons residing at a healthcare facility, or the program capacity of healthcare facilities or services that don't have beds. And it also provided in the statute that we may other relevant factors as determined by the department. Under these processes that we have established, fees are grouped by facility and services, based upon the similarity of inspection, survey activities, and the amount of time to conduct inspection, survey, and complaint investigation activities. We have prepared a chart showing the current statutory fees and how those fees have been set. The chart also shows the proposed statutory maximums, and this is attached to your testimony. I might just take a moment, senators, and talk a little bit about this attachment. Starting with facility type, we give you the date of expiration of those licenses. Generally, all licenses of a particular type expire on the same day and are renewed in a singular process. We have the number of entities bearing that particular kind of license, and you'll see, for example, under nursing homes, that that's broken down into three different categories. Going over two more columns, you'll see that that's upon the number of beds; in other words, the smaller the facility, the smaller the fee. We have included in the second column the current statutory allowed fee, and then we have included in the fourth column the current fee, and then the proposed state-allowed fee. For example, with regard to nursing facilities, the current statutory maximum is \$1,050. The current licensing fees are very close to that. The smallest facility pays \$1,000; the

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larger facilities, 101 beds or more, pay the statutory maximum. And the proposed statutory allowed fee would take that up to \$2,000. The same thing is then true with each of these other categories. Generally speaking, among the larger facilities--nursing facilities, hospitals, assisted living and so forth--the larger categories, the larger facilities are at the statutory maximum. Returning to the testimony, then, that I handed out, we are requesting the statutory increase in maximum fees for a number of reasons. First, fees are currently either at or near the currently allowed statutory maximums for most of the larger facilities. Second, the Outpatient Surgical Procedures Data Act, passed by the Legislature, allows the cost of gathering this data to be a part of the license fee. That particular act is in the process of being implemented now, and will require an additional license fee for hospitals and ambulatory surgical centers. Those fees, therefore, will have to be increased to include these costs. Costs per survey hour continue to increase to cover salary and benefits, operating expenses, and travel expenses. I might add here, particularly in the area of survey, that several years ago the contract, the labor contract, entered into by the state of Nebraska and the employee union, included a significant increase for registered nurses employed by the state of Nebraska. A large number of the surveyors that work on these particular programs are registered nurses and receive those increases. There is a need to add staff to respond to increased numbers of complaints requiring investigation. We think this is for several reasons. First, the public is generally more aware of the complaint process. Also, the public's expectation of the level of services received in healthcare facilities and services seemed to have increased over the past few years. Just to give you a few examples, complaints for hospitals with deemed status have increased, and I might stop here and say that deemed status is a Medicare/Medicaid term that would normally would remove from the state of Nebraska a responsibility to closely supervise those particular kinds of facilities. However, when a complaint is received, it generally comes in through our offices; we must do the intakes. And as the figures in my testimony indicate, in fiscal year 2002, we had 55 complaints against deemed status hospitals. That nearly doubled to 100 in 2003, and went up to 179 in 2004. We do not necessarily investigate every one

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of those complaints when it's against a deemed status hospital. We refer it to the Kansas City regional office of the Centers of Medicare and Medicaid Services, and then they determine whether we should be conducting an onsite investigation. In federal year 2003, we conducted 55 onsite investigations of all hospital types. Forty-one of those were at deemed status hospitals, which as I said, customarily would not fall within our jurisdiction. For federal fiscal year 2004, that increased to 66 onsite investigations, 45 of which were at deemed status hospitals. Onsite complaint investigations have increased from 502 in fiscal year 2003 to 547 in fiscal year 2004. That's for all facility types. We have also seen an increase in the number of surveys for the developmental disability program. The number of certified developmental disability providers under the home and community-based waiver program has increased from 16 to 31. The number of residential and day service settings has increased from 830 to 1,194. The centers for developmental disabilities have increased from 150 to 160. The complaint investigation process for developmental disability providers has expanded from site-specific investigations to broader overviews of the providers' compliance, where warranted. Another increase which takes a considerable amount of the agency's time is long term care survey hours. Hours in survey activities in fiscal year 2002 were 45,304. The next fiscal year it decreased slightly to 45,171, but in the last fiscal year, it increased significantly to 47,529. As Senator Jensen mentioned, when the legislation passed a few years ago, the Appropriations Committee dropped the appropriation to support licensing activities. As I recall, that was about \$350,000. At that point in time, we had some funds in the healthcare facility cash fund that we were able to use to continue the program, but that, together with the increased cost pressures I've cited to you, now makes it necessary for us to request this statutory fee increases. I want to emphasize that this does not mean that we would automatically set every licensing fee at the maximum. As you can see from the schedule that I handed out to you, a number of the fees are set below the statutory maximum. What we do is we figure our costs and we divide those out, allocate them to the various facility types, as appropriate, and we would continue that practice in the future. I thank you for the opportunity to testify and would be happy to

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respond to any questions you may have.

SENATOR BYARS: Thank you, Mr. Nelson, appreciate you testifying. Senator Johnson?

SENATOR JOHNSON: I was just curious. You were talking about the relative increase in the number of investigations that you do and so on. What are the common types of things that bring investigations, and then what percentage of time, and you know, roughly, I'm talking with both these--what do you find? Was there a legitimate complaint, or perceived problem?

RICHARD NELSON: Senator, the kinds of complaints we receive--I should say, they receive, now that I'm over in Finance and Support...

SENATOR JOHNSON: Okay.

RICHARD NELSON: ...Regulation and Licensure used to be my area, but the kinds of complaints we receive range, you know, about as wide as your imagination will go. It certainly includes allegations of abuse or denial of patient rights. It may include allegations of improper care; just about anything you can imagine. We've had complaints because it was too hot, complaints because it was too cold. We get complaints--oh, I shouldn't forget this one. We get complaints about the food service. We get complaints about the temperature of the water, and by the way, some of these are not trivial. You know, complaints about temperature of water for a frail person being put into a tub, for example, can be extremely dangerous. Less than 50 percent of the complaints--I'm doing this from memory--but less than 50 percent of the complaints are substantiated, and it does depend upon the kind of facility that we're going into, how long those complaint investigations take. A complaint investigation in an assisted living facility or in a...well, an assisted living facility that's pretty narrow in scope, may not take a long time to investigate. A complaint against a hospital generally takes much more time, because we're usually given pretty broad instructions from the Kansas City regional office to, you know, follow through thoroughly on those kinds of complaints. I could try to get you some hours, specific hours, but I don't have them off

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the top of my head.

SENATOR JOHNSON: No, that's fine. I was just curious as to the type and whether we are in a society now that, shall we say, has high expectations that might not be met, that also costs a lot more money to provide. That's just where I was coming from.

RICHARD NELSON: Yeah. And Senator, I would say yes, I do think we have increasing expectations among the people of this state with regard to services, and some of that is warranted.

SENATOR JOHNSON: Yeah, yeah, and I might say desirable, I'd say.

RICHARD NELSON: Yeah, sure, surely, surely. But yeah, there are, as I said...the majority of complaints are found to be unsubstantiated, and I might just explain here also, Senator, it may be that whatever the thing was that was complained about occurred, but that does not make it a deficiency unless it was something within the facility's control, something that they failed to do, that they could have done and should have done. So even if when I give you that statistic, that doesn't necessarily mean that somebody's just crying wolf.

SENATOR JOHNSON: Sure.

SENATOR BYARS: Thank you, Senator Johnson.
Senator Cunningham?

SENATOR CUNNINGHAM: Yes, Dick, did you say that there was an appropriation for doing this licensure?

RICHARD NELSON: There had been in previous years.

SENATOR CUNNINGHAM: And it was \$350,000?

RICHARD NELSON: I think it was at the time that the Appropriations Committee cut it. The legislation that Senator Jensen referred to--and I don't remember the LB number, a couple of years ago--I think it was a part of the Health Care Facility Licensure Act--removed a provision in

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statute that said that the Legislature would fund a portion of the licensing activities from General Funds. And at the time this bill went through, that language was removed and the Appropriations Committee, the next year, removed the appropriation.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR BYARS: Thank you, Dick. Have any projections been made on...you have the wide range, obviously, on where you end, what you're charging for fees and where, and how high you can go. Dick, have there been any projections where you need to be, as far as these facilities are concerned, that you can give us any kind of estimates?

RICHARD NELSON: Yeah. We have certainly been working on those projections, Senator. We do know that with regard to the larger kinds of facilities, those that require, you know, more intensive surveying and inspection and so forth, that the fees are going to need to go up considerably. I have not seen any projections that say we would take these to the maximum at this time. And of course, when we set fees, senators, we do that through a regulatory process. So, you know, we do set those for public hearing. People have the opportunity to come in and testify with regard to the level of fees that we have set.

SENATOR BYARS: And I think probably, in getting to this point, you've had dialogue, have you not, with providers and those people who are going to be subject to the increased fees?

RICHARD NELSON: We have not had the kind of dialogue, Senator, that I would normally expect, and the only reason I can give for that at this point, frankly, is the transitioning that we were going through back in October, November, and December, with Mr. Curtiss' departure. We did not have the dialogue that I would have anticipated, no.

SENATOR BYARS: So you can blame the former director of Regulation and Licensure?

RICHARD NELSON: Yeah, I think that's what we do, yes.
(Laughter)

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SENATOR BYARS: Thank you, Dick, appreciate it. Any other questions or comments of Mr. Nelson? Thank you very much.

RICHARD NELSON: Thank you.

SENATOR BYARS: Proponents of LB 174? Opponents of LB 174?

ROGER KEETLE: I've got handouts, naturally.

SENATOR BYARS: Welcome, Mr. Keetle.

ROGER KEETLE: (Exhibit 2) Thank you. Good afternoon. For the record, my name is Roger Keetle, K-e-e-t-l-e. I'm a registered lobbyist for the Nebraska Hospital Association. On behalf of our 85 hospitals and the 35,000 people we employ, the Nebraska Hospital Association is opposed to LB 174 at this time. Again, you've heard what the fee increase is; it's 160 percent for hospitals. It doubles the fee for home health agencies and respite care centers, and as you probably know, hospitals have nursing homes and have hospital-based home health agencies and respite care, so this fee increase hits not only the hospital fee, but all the other services hospitals provide, and provide those other services. We provided to the committee and to all the Legislature our 2004 community benefit study, and what that's showing is is that Medicaid has not kept up with the cost of providing services to hospital patients, to now the sum of about \$82.5 million. If state General Funds had been available, 60 percent of those costs could have been paid by the federal government. Instead, 100 percent of those costs are being borne by someone, or some way through the healthcare system. In addition, over 26,000 Nebraskans have lost health insurance coverage since 2001. We also reported to you that our bad debts have increased from \$99 million to about \$117.3 million. Our traditional charity care has increased about \$3 million from \$64 million to \$67 million, so I think it's partly in frustration that the board of directors said, why are we having a fee increase? I immediately, in fact before the board meeting, talked to HHS about it. I knew the membership would be upset about a fee increase. We did have a meeting where we discussed a variety of issues, but at this point, I've seen no justification or documentation for the fee increases at are

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proposed. What was given to you at the hearing is more than I've heard about it. Another insult to injury is the Governor's proposed budget...even though they are asking for a fee increase provides for no fee increase for any of the providers, and hospitals, in particular. So maybe I'm becoming old and cynical, but I kind of agreed with the board that we should oppose this. You know, our costs have gone up. We have to hire nurses. We have medication costs that we have to pay, and we're being asked to buckle up and not ask for any money. Having said that, I will tell you, though, that we need and support the department's efforts to regulate the industry. And as Senator Cunningham knows, we need and support the idea that ambulatory surgery centers become accountable to the public and the Legislature. And I will tell you that we will support the funding that they need to do the ambulatory surgery data work. That is our commitment, and we will fulfill that commitment. You have in your packet, in fact, a study that was done in South Dakota about ambulatory surgery centers, and those...it was actually done by surgery centers that had become hospitals. There should be a second handout. Yeah, the second one says AHA on it. And you'll see, in South Dakota, the ambulatory surgery centers have become hospitals. We're seeing the same trend in Nebraska, and I'll commend that report to you for your reading. It's a part of a national effort that we're trying to do at the federal level, to deal with unfair competition from the specialty hospitals, the ambulatory surgery centers. And I can tell you the cities in South Dakota that were studied are very similar to Nebraska, and I think it's good information for you to have. We look forward to working on that study with the department, and where we're really at in Nebraska. I think one of the things that's kind of frightening is the increase in procedures that have been done, to increase healthcare costs. And again, are those justified? So now that I've said my spiel, again, we would oppose the bill at this time. We would commend you, because you make the decision on whether this fee increase is justified...we have not seen the data yet. I'm sure the department will give you more information, and I would appreciate it...I've asked them for more information. Be prepared for another letter from me saying we support the bill, and I would like to have you do the same. And that is, okay, show us that this is necessary. What are you going to do with these funds? I

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assure you I can go to the regulation hearing and stand on my head and have no ability to have any influence in the final outcome, if the department doesn't want to be cooperative. The rule and regulation process, to me, is, particularly at HHS, you go into a room with a tape recorder and we follow the process, but it isn't real fulfilling. With that, I would conclude my testimony and ask for any questions you might have, but...

SENATOR BYARS: Thank you, Mr. Keetle. Any questions. I do have...Senator Stuthman? Roger, as I'm looking at it, obviously, the fees have not been set yet.

ROGER KEETLE: Right.

SENATOR BYARS: But as I look at what we have as statute allowed fees at this point for a hospital, even though they're being assessed a \$1,000 current fee, the allowed fees now are \$2,500, and they're asking to raise the allowed fees to \$2,600. They're only levying a fee of \$1,000, but they're actually only requesting to change the statutory language by \$100.

ROGER KEETLE: Yeah, I think it's 1000 percent. It's a 1000...it's more than...

SENATOR BYARS: It's a thousand dollars is what they're assessing now.

ROGER KEETLE: Yeah, and it goes up to \$2,600, is the maximum.

SENATOR BYARS: That's the maximum, but we have a maximum now of \$2,500; they could go to \$2,500 now.

ROGER KEETLE: Right, right.

SENATOR BYARS: All they're raising the allowable amount is \$100.

ROGER KEETLE: Oh, okay. Again, I have not seen any justification for any increase.

SENATOR BYARS: Okay, all right. I just want to make sure

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you knew that, statutorily, they can raise that to \$2,500 today.

ROGER KEETLE: Okay, okay. Yeah, okay, okay.

SENATOR BYARS: As the information, at least, that was provided to us by Mr. Nelson.

ROGER KEETLE: Well, I need to look at the bill again. That--one of us is wrong, and it could be me.

SENATOR BYARS: Okay. And we can share, we can share this information.

ROGER KEETLE: I don't have the bill in my thing or I'd check it now, and I just don't...didn't throw it in my folder.

SENATOR BYARS: Okay, thank you. Senator Stuthman, I think, had his hand up first.

SENATOR STUTHMAN: Thank you, Senator Byars. Roger would be disappointed if I wouldn't ask him a question, so I felt I'd have to. (Laughter) These fees, if they were increased, where would these fees come from, these healthcare facilities, where would they get them?

ROGER KEETLE: By charging patients, sick folks. That's where we get all our money.

SENATOR STUTHMAN: And the majority of the patients are paying patients?

ROGER KEETLE: Maybe not fully paying patients, but that's, that's the game...see, hospitals are Robin Hood organizations. When the sisters started the hospital, they figured, well, if we take good care of the rich, we can handle the poor. And we've been in the Robin Hood cost shifting business since our creation. So we shift costs to provide services to people that can't pay them. We shift costs to provide services that are unprofitable, and we're in a very tough business. And we're very lucky that we have good communities that have good solid hospitals with good, supportive medical staffs and good quality care. What

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really is disturbing to us is to see the disintegration of the system, where we don't have good cooperation between the physicians and the hospitals, and where money comes into play, where it's more advantageous for the doctors to move out of the hospitals and take the profitable services out, which leaves the hospitals in the death spiral of having only the unprofitable services, and also having those services being more expensive to provide.

SENATOR STUTHMAN: And I'll agree with you there, and being with the hospital association for a number of years, you know, it gets down to the private, can-pay people that pay the majority to the bill. And that really concerns me.

ROGER KEETLE: Right. Us, too. That's why we want to be a part of the Medicaid study. I mean, how we address costs...we've got to be all at the table, we've got to recognize that we've got huge factors driving healthcare costs, demographics, number one. Number two, technology, and number three, is this is not a country that rations care. And we are rationing care by finance, and I, as someone who's been in the industry for 25 years, I'm scared to death how much we're charging for insurance, and I don't know how long it can be sustained.

SENATOR STUTHMAN: Thank you.

SENATOR BYARS: Senator Howard?

SENATOR HOWARD: Actually, I wanted to put in a word of appreciation to Senator Byars for clarifying that, because at first blush, I also looked at that as an increase of \$1,600, but in fact, it is raising the allowable ceiling by \$100. It's not saying that increase would automatically go to that figure, because right now, the cost could be \$2,500, if they chose to charge the maximum. So thank you.

SENATOR BYARS: Thank you, Senator Howard. And I think it remains to be seen in part of the regulatory process, as Mr. Nelson said. I would hope they're very mindful, Roger, of those facilities and the situations they're in, when they set those licenses. We as a Legislature, however, have made...we have made the policy decision to say we're going to be a cash, it's going to be cash funded, and so we're the

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ones who made that decision, and we've asked Regulation and Licensure to do our dirty work for us. But I hope they're mindful of all of the healthcare facilities when they do that. Thank you very much for your testimony.

ROGER KEETLE: Thank you.

SENATOR BYARS: Next testifier in favor? Anyone opposed? We did opposed; I'm sorry. Please forgive me. Any other opposed testimony? Any neutral testimony?

RON JENSEN: Vice Chairman, members of the Health and Human Services Committee, my name is Ron Jensen. I'm a registered lobbyist appearing before you this afternoon, actually on behalf of two clients, which is something I don't do very often. I don't testify in a neutral capacity very often. The two clients are the Nebraska Association of Private Resources, who are providers of developmental disability services, and the Nebraska Association of Homes and Services for the Aging, which is made up exclusively of publicly owned and private not-for-profit nursing homes and assisted care facilities. We're not opposed to the bill. We are concerned about the dimensions of the proposed increase for ICFMRs, for nursing facilities, and assisted living facilities. If I've read the bill correctly, those are 100 percent, I believe, and particularly concerned about centers for developmental disability services, which includes group homes for more clients. Presently, those facilities pay \$50 per facility, plus a dollar per bed, so licensure fees of \$54 are pretty common across the state. The proposed maximum is \$1,000, and I realize that's just the maximum, but were the department to take it to \$1,000, that could be a pretty startling increase. I'm also told, and another thing I try not to do is bring hearsay testimony to a committee, but along with the department, I think all of us have been a little bit behind the power curve time wise on this bill...in talking with my client, I'm told that at the time that group homes were brought under the licensure act, there was an understanding that the department would do everything that it could do to keep the licensure fees modest. Again, I wasn't a part of those conversations. Those who were report this to me; probably would have been a good idea to get it in writing. But that notwithstanding, I wanted to bring that concern to the

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committee. So again, we're not opposed to the bill. The dimensions of the proposed maximum increases kind of catch our attention, and we do want to put in a word for the group homes for the developmental...persons with developmental disabilities. Thank you, Mr. Chairman.

SENATOR BYARS: Thank you, Mr. Jensen. Any questions or comments for Mr. Jensen? Thank you very much.

RON JENSEN: Thank you.

SENATOR BYARS: Anybody testifying in a neutral capacity? If not, Senator Jensen, do you care to close? Senator Jensen waives closing, and are you going to open on the committee bill? (See also Exhibit 3)

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SENATOR JENSEN: Yes, I will. Thank you, Senator Byars. For the record, my name is Jim Jensen, representing the 20th District, here today to introduce LB 301. LB 301 is the annual clean-up bill requested by the department. The provisions in this bill have been summarized for you, and certainly HHS personnel are here to explain the contents of the bill in greater detail. I do not...I will not attempt to present that detail to you in the opening remarks but just turn the remainder of this time over to the HHS Policy Cabinet, who are here.

SENATOR BYARS: Thank you, Senator Jensen.

SENATOR JENSEN: Thank you, Senator Byars.

SENATOR BYARS: Welcome, Senator.

CHRIS PETERSON: (Exhibit 1) Thank you. Good afternoon, Senator Jensen, Vice Chairman Byars, and members of the Health and Human Services Committee. I am Chris Peterson, P-e-t-e-r-s-o-n, Policy Secretary for the Health and Human Services System. Now I would like to thank the Health and Human Services Committee for introducing this bill on behalf of the Health and Human Services System. I'm here to testify in support of LB 301. This bill contains many

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important changes that we feel need to be made, to be more productive and efficient in our service delivery within state government. Many of the changes are technical in nature, and we believe they reflect clean up to existing statutes, rather than prescribing new policy. The changes affect the following areas: veterinary medicine and surgery, radioactive waste, vital records management, records required by statute, Medicaid, food stamp eligibility for drug felons, genetic testing, reorganization of offices within the Health and Human Services System, and the Homeless Shelter Assistance Trust Fund. I am the only person here from the Policy Cabinet, but the reason you have such a large audience is because we have the program staff here, should you have questions that you would like answered. Veterinary medicine and surgery: We propose to repeal Nebraska Revised Statute 71-1,161 from the statutes relating to veterinary medicine and surgery. This statute provides for a temporary license to practice veterinary medicine and surgery that would be valid until the date on which the results of the next licensure examination are available to the department. In the past, the temporary license allowed a veterinarian to practice after graduation and prior to receiving the results of the examination that was administered only two times a year by the department. The examination is now administered by a national organization and is given prior to graduation, so the need for the temporary license no longer exists. Radioactive waste: A definition in the radioactive material waste fee statutes contains an error that needs to be fixed. Section 71-3524 defines transuranic waste as waste material containing alfa emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram. A nanocurie measures how radioactive a substance is. This definition is in conflict with the definition in the Radiation Control Act and the federal rules. We believe that it was actually a typographical error. This legislation would correct the definition to have it match the Radiation Control Act, and it would make the definition read: "transuranic waste is waste material containing alpha-emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 100 nanocuries per gram." Vital records management: One proposed change will be to allow electronic signatures on death certificates and fetal death

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certificates. Death certificates are used in Nebraska for collection of death benefits for survivors from insurance policies as well as for administrative and public health purposes. Death certificates are the primary source of information about deaths, but registration procedures and processes remain labor intensive and require several professionals at different locations to complete each of the of the more than 15,000 death certificates registered in Nebraska each year. Specifically, these certificates may require handwritten signatures of the certifying physician, coroner, county attorney, funeral director, or embalmer. The current system, other than data entry search is all manual. The funeral directors manually complete the death records, they are mailed into our office or come in through our front desk from a local funeral director. The death data is entered into the system for our search and statistical purposes. Certified copies are made from the submitted paper copy and are either issued from the front counter or mailed out to the funeral director or customer. Death certificate completion requires a collaborative effort on the part of funeral directors with physicians and frequently with medical examiners and coroners, to provide cause and manner of death information. The manual certificate preparation by the Vital Statistics Division, including the personal delivery of records to physicians, medical examiners, coroners and county attorneys for signature, contributes to slowing registration and delays the availability of death certificate and data. This bill will allow this division to electronically transfer these death certificates to the parties who need to provide information or signature. The current process does not serve the families of the deceased in a timely manner because of the delay in processing. It also does not meet the needs or satisfy the information demands of funeral homes and state and federal agencies promptly. The Nebraska vital records management section plans to re-engineer their current computer system to implement an automated system to register death information which will include the use of electronic signatures for physician, coroners, medical examiners and county attorneys by January 1, 2006. The new system with electronic signatures will provide a more timely certificate, provide more complete and detailed death information and data for analysis, reduce fraud, reduce the number of corrected certificates and save state resources.

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Reports: The Health and Human Services System is required by state law to complete numerous public reports. Many of these reports provide the legislature and public with important information. The purpose of this portion of the bill is to eliminate a few time consuming reports that are no longer necessary. The Managed Care Report from Finance and Support: Section 68-1064 of Nebraska Revised Statutes requires an annual report to the legislature on the healthcare outcomes and cost effectiveness of the Medicaid managed care system. This requirement was put in statute over ten years ago, at the time the legislature endorsed managed care as a payment model for controlling the growth in Medicaid healthcare costs. Managed care no longer represents a new approach to healthcare delivery. The implementation is complete and the impact of implementing it has been fully realized. The use of copayments report from Finance and Support: Section 68-1019(4) of Nebraska Revised Statutes requires an annual report on the use of copayments as a cost sharing mechanism for Medicaid recipients. The list of services on which copayments are applied and the categories of clients who are required to pay them have remained constant. The copayment amounts have remained largely the same, with the exception of an increase in 2002 on drug copayments enacted by the legislature. The report essentially provides the same information from year to year. The EMS report from Regulation and Licensure: Section 71-5177(5) requires the Credentialing Division to "not less than once every five years, undertake a review and evaluation of the act and its implementation, together with a review of the out-of-hospital emergency medical care needs of the citizens of the state of Nebraska and report to the legislature any recommendations which it may have." The Credentialing Division is not required to prepare such a report to the legislature on any other credentialed group. The Credentialing Division, however, is authorized by the Uniform Licensure Law to periodically review all its statutes pertaining to the credentialing of people and update the statutes accordingly. Therefore, we recommend this single report be deleted. LB 8 Report: In the Summer Special Session of 2002, LB 8 was passed into law. It changed Medicaid eligibility requirements relating to Kids Connection, caretaker relatives, budgetary methodology, also called stacking, monthly earnings deduction and transitional medical assistance. In addition, LB 8 required a quarterly

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report now annual after November 3, 2003, on ineligible children and demographic information such as reviews, family income, county of residence, ages of children and reasons for ineligibility. The purpose of this report was to track eligibility review processes of cases closed due to eligibility changes made in LB 8. This report was very useful in the first year. However, the effect of LB 8 is now complete. In addition, the Financial Services Division of the Department of Health and Human Services Finance and Support already produces several reports on enrolled Medicaid persons with various demographic data such as county of residence, age, race, sex, etc. Also legislative changes have been implemented since the passage of LB 8 that make the reported data ambiguous because of policy changes, most notably, LB 411 from the 2003 session, which eliminated coverage of 19- and 20-year-old Ribicoff eligible persons and also presumptive eligibility for children. Public health assurance reports: In the Public Health Assurance Division the following reports are no longer necessary: Nebraska Head and Spinal Cord Injury Registry report, Nebraska External Cause of Injury E-Code registry report and the Nebraska Parkinson's Disease Report. Since the Parkinson's Disease Registry no longer exists, there is no need for the report. The head and spinal cord injury is only one piece of trauma information, and a comprehensive trauma registry report is being developed that will include this information. The emergency code information is already included in a biennial comprehensive report on hospital discharge data. Public Assistance reports: Lastly, these two reports are no longer needed: Report on the county general assistance work programs, and the Report on the Sanctioned Adults. Both reports originated from welfare reform and this information is no longer relevant. System Advocate report: While this report is necessary, it should be changed from quarterly to annually, which is frequent enough to be of benefit to the HHS System. Medicaid: Sections 3 to 6 update references to the federal Social Security Act. These sections would adopt by reference the Federal Social Security Act as of January 1, 2005. Nebraska case law provides that a state statute may incorporate by reference a federal statute, but only as to a date prior to or when such state statute became effective and not all future changes in federal law. These statutes need updating so any federal changes that have been made are incorporated

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by reference. LB 301 proposes changes to current state statute 68-1017.02 pertaining to food stamp eligibility for individuals with drug-related felony convictions. Public Law 104-193 from the Personal Responsibility and Work Opportunity Act of 1996 eliminated food stamp eligibility for any person convicted of possession, use, or distribution of a controlled substance. Federal Public Law 104-193 allowed states to opt out of this provision by enacting a law to serve all or a category of individuals convicted of a controlled substance felony. LB 667 was passed in the 2004 legislative session, and it restored food stamp eligibility to individuals with less than three drug-related felony convictions who are participating or have completed a state licensed or nationally accredited substance abuse treatment program, with the exception of individuals convicted of sale or distribution of a controlled substance. This proposed legislation would amend the current state statute 68-1017.02 by deleting the portion that designates a specific statute section 28-416 in order to have a conviction that would permanently disqualify the drug felon. The way the current statute reads, individuals who have been convicted of a felony involving the sale or distribution of a controlled substance in other states or under federal statutes other than Section 28-416 might be found eligible for food stamp benefits. We do not feel it was the intent of the legislature to reinstate food stamp eligibility to drug felons convicted of sale or distribution or the intent to sell or distribute. In addition, the proposed legislation clarifies that the substance abuse treatment program option applies only to drug felons convicted of possession or use for the first or second offense. Lastly, the proposed legislation not only clarifies that individuals convicted of a drug felony for the sale or distribution of a controlled substance are permanently disqualified from receiving food stamp benefits, but also clarifies that the intent to sell or distribute are reasons for permanent disqualification. Senator Synowiecki introduced LB 667, and we have contacted him about LB 301 and he has no objections. This proposed legislation would not add new beneficiaries to the food stamp program in Nebraska. Genetic testing: The current law requires informed consent for predictive testing, but provides for an exclusion for disorders that are required to be tested by Nebraska's newborn screening law. The newborn screening law applies only to newborns born in this state.

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Every state has a law governing their own newborn screening program, and disorders screened vary state to state. The reason this portion of the consent law needs clarification is for consistency by making this same exclusion for newborns born in other states who receive care here, and get their newborn screening specimen ordered here. Often babies born in neighboring states are transferred to Nebraska hospitals to obtain a higher level of specialty care at the neonatal intensive care units. As a matter of practice, physicians at these units standardly try to do the right thing by complying with the birth state's law. In order not to compromise the physician's ability to help the birth state obtain the correct newborn screening for these newborns, an exclusion to consent should be made for newborn screening tests for newborns born in other states, and required by other states' laws. Reorganization of offices within the Health and Human Services System: Last year we transferred the oversight by a memorandum of understanding for the Office of Oral Health, Disease Prevention and Health Promotion, Family Health, Public Health, Rural Health, and Women's Health from the Department of Health and Human Services to the Department of Regulation and Licensure. Most of these offices can be transferred administratively. However, statutes need to be changed for the transfer of the Office of Rural Health, the Office of Women's Health and the Tobacco Prevention Cash Fund. This bill makes these changes. This would bring all the public health functions under one agency. Also, we are offering amendment 0005. The amendment transfers the Newborn Hearing Screening Program from Services to Regulation and Licensure. We just missed that one. This program is part of the Office of Family Health and is specifically named in statute, so it has to be changed. Homeless Shelter Assistance Trust Fund: Lastly, this bill increases spending authority to fund the expenses of administering the Homeless Shelter Assistance Trust Fund Act. This spending authority is increased from \$50,000 to \$75,000. Cash comes from the documentary stamp tax fee on sale of real estate. We receive 25 cents of \$1.75 collected per \$1,000 value. The Nebraska Homeless Assistance Program is taking the lead on a national initiative to end homelessness. Two new advisory committees, the Advisory Committee for the Nebraska Homeless Assistance Program and the Ad Hoc Committee to End Chronic Homelessness, have been created. Additional and unexpected

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administrative expenses have incurred from this program's support of these two committees. Also, expenses related to travel costs of program site visits, maintenance of the Homeless Management Information System and the annual conference on homelessness require additional funding. And it's not a need for the funds, it's the need for the spending authority. We do have the funds. Thank you, and I'd be happy to answer any questions.

SENATOR BYARS: Thank you, Senator. Questions from the committee? Senator Stuthman?

SENATOR STUTHMAN: Thank you, Vice Chair Senator Byars. Chris, on page 5, on the legislation, proposed legislation for, you know, permanently disqualifying people that are convicted of drug felon, is this in the law already or in the statute already that was passed?

CHRIS PETERSON: Yes. There is a part of the law that is in statute, and what we found when Senator Synowiecki's bill was passed, it allowed the states to opt out of disqualifying them for certain populations. And when the bill was put into statute, we referenced back to a previous Section 28. Well, what that did, then, a state could change its laws that didn't mirror the federal laws, and so we found that then if it were a person who'd been convicted of a crime outside of the state of Nebraska, or convicted of a crime under federal law, they were exempted out of this exemption. And so what this does is puts it back in, so that anyone that has had more than those three felony, three or more of those felony convictions, would now be disqualified from getting food stamps. It was just a little loophole that we didn't find until we started doing eligibility.

SENATOR STUTHMAN: And they're permanently disqualified?

CHRIS PETERSON: Yes, they are.

SENATOR STUTHMAN: Thank you.

CHRIS PETERSON: Um-hum.

SENATOR BYARS: Thank you, Senator Stuthman. Any other

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questions? Any comments? Thank you very much, Senator.

CHRIS PETERSON: Thank you.

SENATOR BYARS: Any other proponents of LB 301? Any
opponents of LB 301? Anyone wishing to testify neutral on
LB 301? If not, Senator Jensen, do you care to close?

SENATOR JENSEN: No.

SENATOR BYARS: Senator Jensen waives closing. This will
close the hearing on LB 301, and will close the hearing for
today.